THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 23246 of 2003

DATED:28-07-2005

Between:

1 Zareena Parveen w/o. late Abdul Lateef
r/o. 8-2-293/15/1 & 8-1-293/15/14, Venkateshwara nagar
Shaikpet Vg.,Banjara Hills, Road No.14 Hyderabad
2 Syed Nisar Ahmad s/o. late Abdul Lateef
3 syed Altaf Ahmed s/o. late Abdul Lateef
4 Syed Ashfaq Ahmad s/o. late Abdul Lateef
5 Syed Iftaquar Ahmad s/o. late Abdul Lateef
6 Syed Nazeer Ahmad s/o. late abdul Lateef
7 Syed Nazeer Ahmad s/o. late Abdul Lateef
8 Rukhiya Begum w/o. late Sadiq Ali
All r/o. 8-2-293/15/1 & 8-2-293/15/14 Venkateshwara Nagar, Shaikpet Vg.,
Banjara Hills, Road No.14, Hyderabad

..... PETITIONER(S)

AND

1 The State of A.P.rep.by its Prl. Secretary Revenue Dept., Secretariat, Hyderabad
2 The Spl.Officer & Competant Authority, Urban Land Ceiling,
Chandravihar,M.J.Road,Hyderabad
3 Khursheed Ali Khan s/o. late Mir Hussaian Ali Khan
r/o. 23-1-365 Hussaini Kothi
Alijah Kotla, Hyderbad

.....RESPONDENT(S)

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No. 23246 of 2003

ORDER:

1. The case, in brief, of the petitioners is that land admeasuring 3,678.97 square metres in Survey No.129/79 at Road No.14, Banjara Hills, Hyderabad, belonged to Mir Hussain Ali Khan, father of the third respondent. That Abdul Lateef, husband of the first petitioner and father of the petitioners 2 to 7, and 8th petitioner, the widow of late Sadiq Ali, were rendering services to the aforesaid Mir Hussain Ali Khan and so he i.e. Mir Hussain Ali Khan, orally gifted the southern 725 square yards to each of them in the year 1965 and put them in possession thereof. Thereafter, Abdul Lateef and Sadiq Ali raised structures which were being assessed to property tax by Municipal Corporation of Hyderabad from the year 1985 onwards, by allotting Municipal Nos. 8-2-293/15/A and 8-2-293/15/10 to those structures. Subsequent to the death of the said Abdul Lateef Khan and Sadiq Ali, petitioners have been enjoying the said property by paying the taxes. When third respondent filed a declaration under the provisions of the Urban Land Ceiling Act, without excluding the 1450 square yards of land gifted by his father to Sadiq Ali and Abdul Lateef Khan, they raised objection and an enquiry was held in connection therewith. When notice under Section 10(5) of the Urban Land Ceiling Act dated 25-10-1994 was served on the third respondent, he did not choose to mention the retainable area of 1,000 square metres, and so by the proceedings dated 13-12-1994, issued under Section 10(6) of the Urban Land Ceiling Act, he was directed to hand over possession of the excess land to the Mandal Revenue Officer, Shaikpet. Accordingly, the Mandal Revenue Officer, Shaikpet took possession of the surplus land on 31-1-1995, under a panchanama and a plan. Questioning the said panchanama they filed appeals to the Commissioner, Urban Land Ceilings, but they were dismissed on the ground of non production of evidence other than the house tax receipts from the year 1985. Questioning that order they filed W.P.No.12687 of 2002 which also was dismissed on 30-4-2003, giving them liberty to file a suit for declaration of their title and so, they filed O.S.No.164 of 2003 and O.S.No.165 of 2003 on the file of the court of II Additional Chief Judge, City Civil Court, Hyderabad, seeking declaration of their title. After issuance of G.O.Ms.No.455 dated 29-9-2002,

where under the Government proposed to regularize the occupied areas under the Act, they filed applications seeking regularization of their possession, but since the second respondent rejected their applications, in view of the pendency of W.P. No.12687 of 2002, they filed W.P.Nos.1165 of 2003 and 1170 of 2003 which also were dismissed observing that second respondent may receive fresh applications seeking the benefit of G.O.Ms. No.455 dated 29-9-2002 from them within eight weeks from the date of receipt of the order, and that he should consider those applications and pass appropriate orders thereon according to law. Therefore, they submitted fresh applications in the month of May,2003 whereupon second respondent informed them that extents of 83.73 square metres and 75.06 square metres respectively only is the surplus land and that the remaining area falls within the retainable area of the third respondent, and wanted them to file fresh applications limiting their prayer for regularization to the above extents only . Then only they came to know that third respondent had on 21-05-2001 made an application seeking change of the location of the retainable area from the western side to the southern side, though he failed to give his option earlier and the area retainable by him was demarcated under a Panchanama. Yet second respondent, by the order dated 2-8-2001, changed the location of the retainable area of the third respondent from western side to southern side, which is in their possession from over 30 years. Since no provision in the Act empowers the change in the retainable area, they after coming to know about the order of the second respondent, had filed an appeal to the Commissioner of Appeals but he dismissed the same on 13-10-2003 on the ground that no appeal is maintainable against a communication not covered by the provisions of the Act . Hence, petitioners filed this petition questioning the proceedings of the second respondent dated 13-10-2003 and the dismissal of their appeal to the Commissioner of Appeals against that order.

2 . On behalf of respondents 1 and 2, Additional Special Officer, Urban Land Ceilings, filed his counter affidavit, alleging inter alia, that after the passing of a revised order under section 8(4) of the Urban Land Ceiling Act and after issuance of the final statement under Section 9 of the Urban Land Ceiling Act determining the surplus area held by the third respondent as 2678.97 square metres, notification under Section 10 (1) of the Urban Land Ceiling Act was issued on 4-4-1994 and the same was published in A.P.Gazette No.19 dated 12-5-1994. Thereafter declaration issued on 11-8-1994 under Section 10(3) of the Urban Land Ceiling Act was

published in the Gazette dated 8-9-1994, and consequently that land vested in the Government free from all encumbrances from 15-9-1994. Thereafter notice dated 25-10-1994, under Section 10(5) of the Urban Land Ceiling Act was served on the third respondent and also the encroachers calling upon them to surrender the surplus land within 30 days. Since they failed to hand over possession, proceedings under Section 10 (6) of the Urban Land Ceiling Act were issued on 31-12-1994, authorizing the Enquiry Officer to take over the possession of the surplus land and hand it over to the Mandal Revenue Officer concerned and accordingly the Mandal Revenue Officer took over possession of the surplus land and handed over possession of the same to the Mandal Revenue Officer, Shaikpet, on 3-1-1995. In the meanwhile, alleging that he, in response to the notice under Section 10(5) of the Urban Land Ceiling Act, had exercised his option to hold the retainable area of 1,000 square metres on 21-11-1994 by mentioning the specific boundaries of that portion, third respondent filed a petition. During enquiry into that petition it came to light that the Revenue Divisional Officer vide ref.No.D/3408/90 had already issued house site pattas in the area of 1000 square yards ordered to be retained by the third respondent. Therefore, a revised sub division record was prepared relating to the 1000 square metres retainable area of the 3rd respondent and surplus area of 2,678.97 square metres also was prepared vide proceedings No.E1/8886/76 dated 6-8-2001. After the Chief Commissioner of Land Administration dismissed the appeals of encroachers on 8-5-2001 they filed W.P. No. 16529 of 2001 which was disposed of with a direction to rehear the appeals as per law. As per that direction, Commissioner of Land Administration, after hearing the appeal afresh, dismissed the same on 11-7-2002 .Against that order of dismissal petitioners filed W.P.No.12687 of 2002 which was dismissed on 30-4-2003. Petitioners, who are not the owners of the land, and who have no documentary evidence in support of their claim of ownership to the land, have no right in that land, more so because third respondent only, but not his father, purchased an extent of 3,678.92 square metres under a registered sale deed dated 21-3-1968 . Since structures in the land came up subsequent to coming into force of the Act no notice need b e issued to the encroachers who raised those structures. During enquiry into the petitions filed by the petitioners it came to light that an extent of 83.73 and 75.06 square metres only falls within the surplus area, and the remaining area falls within the area retainable by the third respondent, and so petitioners were advised to file fresh applications limiting their claim to that extent.

3 . Third respondent filed his counter, contending, inter alia, that the order in W.P.No.13922 of 2003 filed by the petitioners questioning the order of the Commissioner dated 13-10-2003 operates as res-judicata and that he is entitled to select the area of his choice as retainable area and that petitioners have no locus standi to question his choice.

4. The main contention of the learned counsel for the petitioners is that petitioners, after filing of this petition, had approached the second respondent seeking a revision of the order allowing the change in the retainable area of the third respondent passed by him, and so second respondent addressed letters L.R.E1/455/340/2004 and E1/455/341/2004 in C.C.No.E.1/8886/76 dated 29-4-2005 to the Special Chief Secretary, informing him that after issuance of final orders he ceases to have jurisdiction to modify the same and that he cannot review his orders, and that letter of the second respondent amply establishes the contention of the petitioners that second respondent cannot review his earlier order. It is his contention that since petitioners have been in continuous possession of the property from over 30 years and since change of the retainable area by the 3rd respondent as ordered by the 2nd respondent now, causes hardship to the petitioners, the impugned orders may be set-aside.

5. The contention of the learned Government Pleader is that the petitioners have no locus standi to question the orders impugned.

6 . The contention of Sri D.Prakash Reddy, learned senior counsel appearing for third respondent, is that since the petitioners, admittedly, filed suits for declaration of their title in respect of the land said to be in their possession and since what area can be retained by the third respondent, after finalization of the declaration under the Urban Land Ceiling Act, is a matter between respondents 2 and 3, petitioners have no locus standi to question the decision relating to the area that can be retained by the third respondent. It is his contention that petitioners are in no way prejudiced by the orders impugned in the petition because in the event of the suits filed by the petitioners seeking declaration of their title being decreed, they would be entitled to the said land irrespective of the question whether it falls within or outside the retainable area of the 3rd respondent. It is his contention that third respondent had to seek a change of the retainable area because the area which was ordered to be

retained by him is covered by pattas issued to the weaker Sections of the Society. Relying on an unreported judgment **B.Sukkamma Vs. State of A.P.** which is confirmed in W.A.No.1185 of 2000 on 3-1-2002, he contends that there are no merits in the petition. It is his contention that though the final observations in the order of the Commissioner of the appeals may not be correct that order cannot be assailed, since the reasons given by him earlier and his ultimate decision is correct. With regard to the contention of the learned counsel for petitioners relating to the letter of the second respondent dated 29-04-2005, his contention is that the said letter need not be taken into consideration because it was written on the very same day on which the petitioners gave a representation to him, for reasons best known to him.

7. From the material papers produced by the learned counsel for petitioners, at the time of hearing, it is seen that petitioners gave a representation to the second respondent on 29-04-2005. On the very same day i.e.29-04-2005, the present incumbent –second respondent addressed a letter to the Special Chief Secretary to Government that he has no jurisdiction to modify the sketch. That letter dated 29-04-2005 of second respondent addressed to the Special Chief Secretary is of no help in deciding this petition. The reasons that prompted the second respondent to address that letter are not known. That letter does not have the effect of canceling the earlier order passed by second respondent. So I do not take that letter into consideration for disposal of this case.

8. The grievance of the petitioners is that by the second respondent ordering change of the retainable area of the land of the third respondent, they are put to inconvenience because that area, now ordered to be retained by the third respondent, is covered by the land in respect of which they filed O.S.Nos.164 of 2003 and 165 of 2003. It is also their case that ordering of a change of retainable area is not contemplated by the Urban Land Ceiling Act or the Rules made therein.

9. It is no doubt true that the observation of the Commissioner of Appeals that “an appeal against an order not covered by the Act is not maintainable” is not correct, because if the original authority passes an order, which is not within his competence, the appellate authority has the power to set aside such order, by entertaining an appeal against such an order. But, in my considered opinion, question whether second respondent had the authority or power to order a change in the retainable area of the third respondent or not, is not necessary for deciding this

petition, because petitioners by no stretch of imagination, can be said to be aggrieved by the order impugned or the order of the second respondent because they admittedly filed suits in O.S.No.164 of 2003 and O.S.No.165 of 2003 seeking declaration of their title to the lands alleged to be in their possession, in pursuance of the direction given in W.P.No.12687 of 2002 dated 30-4-2003. So the question as to whether the area covered by the suits is in the retainable area of the petitioner or elsewhere will not be of much consequence, because if and when the civil court, after trial, holds that petitioners are entitled to the relief sought, whether the said land is in the retainable area of the third respondent or outside the retainable area they would get a right to retain or possess that area. So I do not wish to go into the merits of the other contentions raised by the learned counsel for both sides firstly because it is not necessary for disposal of this petition and secondly because any observation made by me in this petition may be construed as an opinion expressed by me and so it may have bearing on the suits filed by the petitioners in the civil court, which are still pending.

10. Since suits filed by the petitioners for declaration of their title are pending, question of this court giving any direction to regularize the possession of petitioners by taking recourse to G.O.Ms.No.455, cannot be given.

11. Therefore, I find no merits in this petition and hence the petition is dismissed. No order as to costs.

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C.Y.SOMAYAJULU,J

28-07-2005

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